

9-47.000

FOREIGN CORRUPT PRACTICES ACT OF 1977 (AS AMENDED)

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This chapter contains the Department's policy regarding investigations and prosecutions of violations of the Foreign Corrupt Practices Act (FCPA). The FCPA prohibits United States corporations and nationals from offering or paying, or authorizing the offer or payment, of anything of value to a foreign government official in order to obtain or retain business. In addition, the FCPA requires publicly-held United States companies to make and keep books and records which, in reasonable detail, accurately reflect the disposition of company assets and to devise and maintain a system of internal accounting controls sufficient to reasonably assure that transactions are authorized, recorded accurately, and periodically reviewed.

The Criminal Resource Manual contains a discussion of the law in this area

Investigation of Complaints	Criminal Resource Manual at 1015
FCPA Opinion Procedure	Criminal Resource Manual at 1016
Corporate Recordkeeping	Criminal Resource Manual at 1017
Foreign and Corrupt Practices by Issuers	Criminal Resource Manual at 1018
Foreign Corrupt Practices By Domestic Concerns	Criminal Resource Manual at 1019

9-47.110 Policy Concerning Criminal Investigations and Prosecutions of the Foreign Corrupt Practices Act

No investigation or prosecution of cases involving alleged violations of Sections 103 and 104, and related violations of Section 102, of the Foreign Corrupt Practices Act (FCPA) of 1977 (15 U.S.C. §§ 78m(b), 78dd-1, and 78dd-2) shall be instituted without the express authorization of the Criminal Division.

Any information relating to a possible violation of the FCPA should be brought immediately to the attention of the Fraud Section of the Criminal Division. Even when such information is developed during the course of an apparently unrelated investigation, the Fraud Section should be notified immediately. Close coordination of such investigations and prosecutions with the Department of State, the United States Securities and Exchange Commission (SEC) and other interested agencies is essential. Moreover, pursuant to the 1988 amendment to the FCPA, the Department has established a FCPA Opinion Procedure. *See* the Criminal Resource Manual at 1016. As part of this procedure, which is administered by the Fraud Section, the Assistant Attorney General (AAG) for the Criminal Division reviews proposed business conduct that may constitute a violation of the Act and makes

a binding decision on whether the Department will take an enforcement action should the transaction proceed further.

Unless otherwise agreed upon by the AAG, Criminal Division, prosecutions of alleged violations of Sections 103 (Issuers) and 104 (Domestic Concerns) of the FCPA will be conducted by Trial Attorneys of the Criminal Division. Prosecutions of alleged violations of Section 102 (Recordkeeping), when such violations are related to a violation of Section 103 or 104, will also be conducted by Criminal Division Trial Attorneys, unless otherwise directed by the AAG, Criminal Division.

The investigation and prosecution of particular allegations of violations of the FCPA will raise complex enforcement problems abroad as well as difficult issues of jurisdiction and statutory construction. For example, part of the investigation may involve interviewing witnesses in foreign countries concerning their activities with high-level foreign government officials. In addition, relevant accounts maintained in United States banks and subject to subpoena may be directly or beneficially owned by senior foreign government officials. For these reasons, the need for centralized supervision of investigations and prosecutions under the FCPA is compelling.

9-47.130 Civil Injunctive Actions

The SEC has authority to obtain civil injunctions against future violations of Sections 102 and 103 of the FCPA. Civil injunctions against violations of Section 104 of the FCPA (Section 104(c)) by domestic concerns shall be instituted by Trial Attorneys of the Criminal Division in cooperation with the appropriate United States Attorney (USA), unless otherwise directed by the Assistant Attorney General (AAG), Criminal Division.